

per discharge of the high and responsible duties of said office.

Second. That he, the said Newcomb, judge as aforesaid, did, at the . . . . . term of the district court, A. D. 187-, in the county of El Paso, sustain indictments against various and sundry persons, to-wit, about one hundred persons, whose names are at present unknown, upon the charge of fornication, and did cause the said parties to be tried upon said charge, and upon a conviction of the parties did remit the fine, requiring payment alone of the costs and fees; such prosecution upon said indictments and the said acts and doings of said judge being without warrant of law and in defiance of the decisions of the Supreme Court of this State.

Third. That he, the said Newcomb, judge as aforesaid, did unlawfully arrogate to himself the power and authority to set aside and disregard the will of the people, as expressed by ballot at the election held on the second day of December, A. D. 1873, in refusing to recognize the officers elected by the people at said election for the county of El Paso, the said officers having qualified in accordance with law, and in declining to know or recognize any officer who did not hold a commission from E. J. Davis, as Governor of Texas.

Wherefore, the Senate and House of Representatives of the State of Texas do say, that because of the incompetency of S. B. Newcomb, judge of the Twenty-fifth Judicial District and his aforesaid criminal acts and doings; that he, judge as aforesaid, is unworthy to hold the high office he now occupies, and demand and request his removal therefrom; and the said Senate and the said House of Representatives, do reserve unto themselves the right to hereafter specify the necessary dates and names of parties, and to proffer such proofs as may be necessary to sustain this address.

*Resolved*, That the address of the Senate and House of Representatives of the State of Texas, requesting the removal of S. B. Newcomb, District Judge of the Twenty-fifth Judicial District, be entered upon the journals of both houses of this Legislature, and that said S. B. Newcomb, judge as aforesaid, be served with a copy of said address, and that citation issue requiring him, the said Newcomb, to appear before the proper committee within the time required by the rules governing such cases, and show cause why such address should not be adopted; and that a committee of three from the Senate and five from the House of Representatives be appointed to consider said address and conduct proceedings thereon.

Senator Westfall moved to suspend the call. Lost.

Senator Swift moved that Senators Ireland and Randle be excused. Lost.

Senator Dillard stated that the hour had arrived for the consideration of the special order, to-wit: the contested election case from the Thirteenth Senatorial District, and moved that the call of the Senate be suspended, in order to consider said special order. Carried.

On motion of Senator Flanagan, the Senate took a recess of five minutes to allow the sergeant-at-arms to prepare seats, desks, etc., for the parties and attorneys in the case.

At the expiration of the time allowed, the President called the Senate to order, and ordered the two reports of the committee on said case read, which was done. The following was then announced as the order of proceeding in said case:

That the attorneys for the contestant should be Messrs. Shepard & Searcy, and Peeler & Fisher; and for the contestee, Messrs. Delany and McLeary; that the attorneys for the contestant would open the argument, then the attorneys for the contestee would be heard, and the attorneys for the contestant would be allowed the closing argument.

Mr. Searcy then addressed the Senate.

On motion of Senator Ball, the Senate adjourned to 3 o'clock P. M.

#### AFTERNOON SESSION.

Senate met pursuant to adjournment; roll called; quorum present.

The President of the Senate announced the following Senators as the committee in the case of Judge S. B. Newcomb, of the Twenty-fifth Judicial District: Senators Russell, Dwyer and Friend.

The pending question being the contested election case from the Thirteenth Senatorial District, the Senate was addressed by the Hon. Mr. Delany on behalf of contestee. At the close of his remarks, Hon. Mr. McLeary addressed the Senate on behalf of contestee. Mr. Peeler then addressed the Senate on behalf of contestant.

On motion of Senator Swift, the Senate adjourned to 10 A. M., to-morrow.

#### THIRTY-SECOND DAY.

SENATE CHAMBER,  
AUSTIN, February 20, 1874. }

Senate met pursuant to adjournment. Roll called; quorum present.

Prayer by Rev. Dr. Young, of Sherman. The journal of yesterday was read and adopted.

Senator Westfall presented the petition of

J. L. Chandler. Referred to Committee on Claims and Accounts.

Senator Dwyer presented a petition from citizens of Wilson county, protesting against the annexation of a portion of the county of Guadalupe." Read and referred to Committee on Counties and County Boundaries.

Senator Bradley introduced a bill, entitled "An act to prohibit the sale or giving away of intoxicating or spirituous liquors, within five miles of the institute of learning, situated in Dresden, Navarro county, Texas." Read first time and referred to the Judiciary Committee.

Senator Westfall introduced a bill, entitled "An act to authorize the Commissioner to issue land certificates in certain cases." Read first time and referred to the Judiciary Committee.

Senator Westfall introduced a bill, entitled "An act to provide for, and regulate the construction of toll bridges." Read first time and referred to the Committee on Internal Improvements.

Senator Dillard introduced a bill, entitled "An act making an appropriation to defray the mileage and *per diem* of witnesses in certain cases." Read first time.

Senator Ball introduced a bill, entitled "An act to provide for holding court in Eastland county." Read first time.

The unfinished business being the consideration of House bill No. 146, "An act to branch the Supreme Court," together with the majority report of the committee on said bill, that "Dallas" be stricken out and "Tyler" inserted, it was taken up.

Senator Ireland asked to be excused from voting.

Senator Swift moved that Senator Ireland be excused. Lost.

The report of the committee was adopted by the following vote:

Yeas—Senators Camp, Dillard, Dwyer, Erath, Friend, Hobby, Ireland, Morris, Parker, Russell, Stirman, Swift and Westfall—13.

Nays—Senators Allison, Ball, Baker, Bradshaw, Bradley, Davenport, Ellis, Moore, Trolinger and Wood—10.

Senator Flanagan stated that he had paired off with Senator Ledbetter.

Absent, not voting—Senators Culberson, Ledbetter and Randle.

The bill was then read second time and passed to third reading.

On motion of Senator Camp, the rules were further suspended, bill read third time and passed.

The hour for the further consideration of the special order having arrived, to-wit: the contested election case from the Thirteenth Senatorial District, it was taken up.

Senator Wood offered the following as a substitute for the two reports made by the committee:

*Resolved by the Senate, That neither Z. Hunt nor Walter M. Burton are entitled to a seat in the Senate, as Senator from the Thirteenth Senatorial District, but that the Senatorship from said district is vacant, and that his Excellency the Governor, be informed that a vacancy exists for Senator in said Thirteenth Senatorial District, and that he be requested to order an election at the earliest practicable period to fill such vacancy.*

Lost by the following vote:

Yeas—Senators Allison, Bradley, Dwyer, Ellis and Wood—5.

Nays—Senators Ball, Baker, Bradshaw, Camp, Davenport, Dillard, Erath, Flanagan, Friend, Hobby, Ireland, Morris, Moore, Parker, Randle, Russell, Stirman, Swift, Trolinger and Westfall—20.

Absent, not voting—Senators Culberson and Ledbetter.

Senator Swift moved to adopt the resolution offering to seat the contestant Hunt.

On motion of Senator Ireland, the resolution was divided.

The vote was then taken on the following resolution:

*Resolved, That Z. Hunt is entitled to the position of Senator from the Thirteenth Senatorial District, and that he be permitted to qualify and take his seat as such immediately.*

Lost by the following vote:

Yeas—Senators Ball, Bradley, Dillard, Ellis, Erath, Ireland, Morris, Parker and Swift—8.

Nays—Senators Allison, Baker, Bradshaw, Camp, Davenport, Dwyer, Flanagan, Friend, Hobby, Moore, Randle, Russell, Stirman, Trolinger, Westfall and Wood—16.

Absent, not voting—Senators Culberson and Ledbetter.

Senator Davenport moved to adopt the resolution favoring the seating of Burton, the contestee.

On motion of Senator Swift, the question was divided, so the vote was taken on first part of the resolution, which reads thus:

WHEREAS, At an election held in the Thirteenth Senatorial District, on the second of December, 1873, W. M. Burton received a majority of the votes cast; therefore, be it

*Resolved, That the said W. M. Burton is entitled to a seat in the Senate of the Fourteenth Legislature, and that he take the oath prescribed by the Constitution, and be admitted to his seat immediately.*

Carried by the following vote:

Yeas—Senators Baker, Bradshaw, Camp, Davenport, Dwyer, Flanagan, Friend, Hobby, Moore, Randle, Russell, Stirman, Trolinger and Westfall—14.

Nays—Senators Allison, Ball, Bradley, Dillard, Ellis, Erath, Ireland, Morris, Parker, Swift and Wood—11.

Absent not voting—Senators Culberson and Ledbetter.

On motion of Senator Flanagan, the remainder of the resolution was adopted, with an amendment to same, by striking out the word "thirteenth," and inserting "fifteenth," so that the remainder of the resolution would read: "and that he be entitled to the *per diem* and mileage allowed by law, from the fifteenth day of January, 1874."

A message was received from the House, announcing the passage of House bill No. 181, "An act to amend section twenty-nine of an act entitled 'An act prescribing the times of holding the district courts in the several judicial districts of the State,' approved August 10, 1870."

On motion of Senator Wood, the rules were suspended to take up House bill No. 181, "An act to amend section twenty-nine of an act entitled 'An act prescribing the times of holding the district courts in the several judicial districts of the State,' approved August 10, 1870."

On motion of Senator Wood, the rules were suspended, bill read second time and passed to third reading.

On motion of Senator Wood, the rules were further suspended, bill read third time and passed.

On motion of Senator Baker, the rules were suspended to take up Senate bill No. 156, "An act to authorize the Governor to sell certain bonds of the State, and to adjust and settle the indebtedness of the State with Williams & Guion."

The bill was read second time and ordered engrossed.

On motion of Senator Wood, the rules were suspended, bill read third time and passed by the following vote:

Yeas—Senators Allison, Ball, Bradshaw, Baker, Bradley, Camp, Davenport, Dillard, Dwyer, Ellis, Erath, Flanagan, Friend, Hobby, Ireland, Morris, Moore, Parker, Randle, Russell, Stirman, Swift, Trolinger, Westfall and Wood—25.

Nays—None.

Absent, not voting—Senators Culberson, Ledbetter and Burton.

(Senator Flanagan in the chair.)

Senator Dillard introduced a bill entitled "An act making provision for the pay of witnesses in certain cases." Read first time, rules suspended, bill read second time, and, on motion of Senator Bradley, was referred to the Committee on Judiciary, together with Senate bill No. 185, "An act to make an appropriation to pay mileage and *per diem* of witnesses in certain cases."

A message from the House was received, announcing the passage of Senate bill No. 50, "An act making an appropriation to pay judgment in favor of E. M. Smith against

the State of Texas;" also, Senate joint resolution No. 118, "Instructing the Attorney General to bring suit against James Davidson, late Adjutant General, and to prevent the sale of property in this State, held in his name, until the termination of said suit;" also, House bill No. 142, "An act to provide for the immediate apportionment of the school fund, which should have been apportioned in December, 1873."

House bill No. 133, "An act to enlarge and define the boundaries of Wilson county, was read second time and passed to third reading.

(Mr. President in the chair.)

The hour for the consideration of the special order, to-wit, Senate joint resolution No. 88, "To call a constitutional convention," having arrived, the resolution was taken up and read second time.

Senator Ireland moved that the further consideration of the joint resolution be postponed to 11 o'clock A. M. to-morrow, and that it be made special order for that day and hour.

Senator Flanagan moved to amend by adding, "and continue to be a special order from day to day, until disposed of."

The amendment was accepted, and the motion, as amended, was adopted.

A message was received from the House announcing the passage of House bill No. 41, "An act to allow incorporated cities and towns to prevent the erection of wooden buildings in any part of said cities and towns."

Senate bill No. 50, "An act to authorize and allow the several county courts in this State in certain cases, to levy and collect a special tax," was taken up and considered.

On motion of Senator Ireland, it was considered by sections.

On motion of Senator Wood, the following amendments, proposed by the Judiciary Committee, were adopted:

Amend caption as follows: "An act to authorize and allow the several county courts in this State to build court houses and jails, and make repairs and improvements for the benefit of the county, and to provide funds to defray the expense of the same."

Amend by striking out section seven.

Amend further, by adding the following sections:

Section 7. When, in the judgment of any county court of any county in this State, it shall be necessary and proper to order any of the buildings, improvements or repairs, in the preceding sections of this act mentioned, and the cost of such buildings, improvements or repairs shall exceed the amounts specified in the preceding sections of this act, the said county court shall, nevertheless, have the power to order and contract for such buildings, repairs

or improvements, and in such case the said county court shall be authorized to issue the bonds of said county, to defray the cost of such buildings, repairs or improvements. Such bonds shall not be issued in sums less than one hundred dollars, nor more than five hundred dollars. Such bonds shall not run for a shorter period than five years, nor for a longer period than ten years, and shall not bear a greater rate of interest, than the rate of ten per cent. per annum. Said bonds shall be numbered consecutively, and the county court shall cause the same to be duly registered in a book, kept for that purpose; and each bond before delivered shall be indorsed registered, with the date of registration, and page of the registry-book, where it is registered, and such indorsement shall be signed by the presiding justice of the county court, attested by the seal of said court, and no bond unless it is registered and indorsed as herein provided, shall be of any binding force or effect as against the county. Said bonds shall be authenticated by the signature of the presiding justice of the county court, attested by the clerk of said court, with the seal of said court, and said bond shall specify on its face the special object and purpose for which it was issued. No bonds under the provisions of this act shall be issued by the county court, except at a regular term, and not then, unless said county court shall give notice by publication for at least four weeks in some newspaper published in the county, before the term of the court at which said order shall be entered, to the effect that it is proposed to enter an order for the issuance of the bonds of such county, stating the amount proposed to be issued, and the purpose for which they are to be issued; and at the term of court at which said proposition, to issue bonds, shall be considered, any citizen of the county shall have the right to appear before said court, and be heard in opposition to or in favor of the issuance of said bonds. If there be no newspaper published in the county, the notice aforesaid shall be given by posting printed notices in at least three public places in each justice's precinct of such county; and no issuance of bonds, as against the county, shall be valid unless these prerequisites have been complied with.

Section 8. When said bonds have been issued, the county court shall, by order, levy the tax authorized by the first section of this act, or so much thereof as may be necessary, to raise a fund to pay the annual interest due on said bonds; and, further, to pay annually such an amount of the principal of said bonds that when said bonds reach maturity there shall not be more than one-fifth or one-tenth, as the case may be, of the principal unpaid. And the tax au-

thorized in the first section of this act, or so much thereof as shall be necessary, shall be levied by the county court, from year to year, to meet the payment of the principal and interest of said bonds, as herein provided. The fractional part of the principal of said bonds, annually payable, shall not bear interest after it so becomes payable.

Section 9. The limitation as to amounts contained in the third section of this act, shall not apply to buildings, improvements or repairs ordered when the cost is to be defrayed by the issuance of the bonds of the county; except no building, repairs or improvements shall be ordered by the county court when the maximum tax, allowed to be levied under the provisions of this act, will not raise a sufficient fund to defray annually the interest on the amount of bonds issued, and the fractional part of the principal required to be paid annually by this act. The county bonds authorized under the provisions of this act, may be issued in order to defray the cost of any county building, repairs or improvements, contemplated in this act, which at the time of the passage of this act, may be ordered, authorized or contracted for by any county court in this State, to the extent allowed by this act.

Section 11. That this act take effect and be in force from and after its passage.

Senator Moore offered the following amendment: Amend by inserting the word "fourth" in place of the word "third," in the twenty-first line; and the word "fourth" in place of the word "tenth," in twenty-fourth line. Lost.

Senator Dwyer moved to strike out the word "twenty" in twenty-eighth line, and insert "twenty-five." Lost.

Senator Bradshaw moved to strike out all of section three to the word "in" in the forty-third line. Lost.

Senator Friend offered the following amendment: Amend lines six and seven, line thirteen, line twenty, line twenty-seven, and lines thirty-four and thirty-five, by striking out the words "at any one time," and insert "in any one year." Adopted.

Senator Wood moved that section three, as amended, be adopted. Carried.

Senator Ireland moved to strike out the word "county" in section four. Adopted.

The section, as amended, was then adopted.

The fifth section was then adopted.

The sixth section was then adopted.

Senator Ireland moved to add section ten to the bill, as follows, which was adopted:

Section 10. That the police courts of the several counties of this State shall require the county treasurer to give a bond with two or more sureties, to be approved by said court and conditioned as treasurer's bonds in other cases; said bond to be in

double the amount of taxes so levied and collected. The bill as amended, was then ordered engrossed.

On motion of Senator Ireland, the rules were further suspended, bill read third time and passed.

Senator Ellis presented the following minority report on Senate bill No. 152, "An act to repeal all laws empowering counties, cities and towns to levy taxes to aid in the construction of railroads, etc., and other works of internal improvement:"

*Hon. R. B. Hubbard, President of the Senate:*

A minority of your Committee on State Affairs, to whom was referred Senate bill No. 152, entitled "An act to repeal all laws empowering counties, cities and towns to levy taxes to aid in the construction of railroads and other works of internal improvements," being unable to agree on the conclusion of the majority of said committee, beg leave to submit this their minority report, and to state that in their opinion the adoption of said majority report, and the passage of said bill would operate most injuriously to the highest interest of many counties, cities and towns of the State, and would seriously interfere with, if not absolutely defeat the constitutional right of counties, cities and towns to aid in the construction of railroads and other works of internal improvement. (See article 92, general provisions of the Constitution.) Wherefore the minority of your committee recommend that said bill do not pass.

Respectfully submitted,

O. ELLIS,

G. B. ERATH.

On motion of Senator Westfall, House bill No. 142, "An act to provide for the immediate apportionment of the school fund, which should have been apportioned in December, 1873," was taken up and considered.

On motion of Senator Ireland, the rules were suspended, the bill was read second time and passed to third reading.

On motion of Senator Wood, the bill was referred to the Committee on Education.

On motion of Senator Friend, the Senate adjourned to 10 o'clock A. M. to-morrow.

### THIRTY-THIRD DAY.

SENATE CHAMBER,

AUSTIN, February 21, 1874. }

Senate met pursuant to adjournment. Roll called; quorum present.

Prayer by Rev. Mr. Philpot, of Austin.

Journal of yesterday read and adopted.

On motion of Senator Davenport, Senator Baker was excused until Monday next.

Senator Wood, for Judiciary Committee, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Judiciary, to whom was referred Senate bill No. 97, "An act to further regulate the proof or acknowledgment of deeds and other written instruments, now permitted or required by law to be recorded," have carefully considered the same, and herewith report a substitute for said bill, and recommend that said substitute do pass.

All of which is respectfully submitted.

WOOD, for Committee.

The title of the substitute referred to, is: "An act to require district clerks and other officers, authorized and permitted by law to take acknowledgments and proof of deeds and other written instruments, to keep a record of the same." Read first time.

Senator Flanagan, chairman of the Committee on Counties and County Boundaries, submitted the following reports:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Counties and County Boundaries, to whom was referred House bill No. 138, "An act to enlarge and define the boundaries of Wilson county," have had the same under consideration, and, after careful examination, instruct me to report it back, and recommend that it do pass.

WEBSTER FLANAGAN, Chairman.

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Counties and County Boundaries, to whom was referred House bill No. 79, "An act to extend the area and enlarge the county of Gregg," have carefully examined into the merits of the bill, and had before them for and against the proposition, together with petitions praying for the passage, and petitions, numerous signed, protesting against its passage. Giving said petitions a careful examination, we find that said petitions are signed by the same parties. We are therefore at a loss to know the true wish of the people directly interested in the premises. All things considered, your committee have instructed me to report the bill back to the Senate and recommend it do not pass.

WEBSTER FLANAGAN, Chairman.

Senator Ireland, chairman of Judiciary Committee, submitted the following reports:

*Hon. R. B. Hubbard, President of the Senate:*

Your Judiciary Committee, to whom was referred Senate bill No. 81, "An act better defining the marital rights of parties," passed the thirteenth day of March, A. D. 1848, respectfully report the same back, with the following amendment: Amend first clause of first section, by striking out the words "family of the husband and wife," and insert the words "the wife or her children," and amend further by striking out the words "the husband and," and recommend that the same, as amended, do pass.

IRELAND, Chairman.